

safe or effective or both and who is requesting approval or contesting withdrawal of approval has the burden of proof in establishing safety or effectiveness or both and thus the right to approval. The burden of proof remains on that participant in an amendment or revocation proceeding.

[44 FR 22339, Apr. 13, 1979 as amended at 64 FR 399, Jan. 5, 1999]

§ 12.89 Participation of nonparties.

- (a) A nonparty participant may—
 - (1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;
 - (2) Submit written testimony and documentary evidence for inclusion in the record;
 - (3) File written objections, briefs, and other pleadings; and
 - (4) Present oral argument.
- (b) A nonparty participant may not—
 - (1) Submit written interrogatories; and
 - (2) Conduct cross-examination.
- (c) A person whose petition is the subject of the hearing has the same right as a party.
- (d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

[44 FR 22339, Apr. 13, 1979, as amended at 48 FR 51770, Nov. 14, 1983]

§ 12.90 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical con-

duct during any hearing, constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 12.91 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At that conference the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination if leave to conduct oral examination is granted on any issue, as far as practicable at that time.

§ 12.92 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer and may be grounds for striking the participation under § 12.45.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Division of Dockets Management under § 12.80:

(i) Any additional information to supplement the submission filed under § 12.85, which may be filed if approved under § 12.85(c).